

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>GYRLS GROUP LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 67849</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 1, 2016, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Meredith P. Van Horn, Esq. Petitioner is protesting the 2015 actual value of the subject property.

The parties stipulated to the admittance of Mr. Todd J. Stevens. Stevens and Associates, Inc., and Mr. Stephen M. Snyder of the Douglas County Assessor’s Office as expert witnesses.

Subject property is described as follows:

**13365 James E. Casey Avenue, Englewood, Colorado  
Douglas County Schedule No. R0475931**

The subject is an owner-occupied industrial building of 25,135 square feet that was constructed in 2008. It is situated on a 2.48-acre site. Petitioner’s witness, Mr. Todd Stevens, testified that the building was in good condition with no items of deferred maintenance on the date of value.

Petitioner is requesting an actual value of \$1,600,000 for the subject property for tax year 2015. Respondent assigned a value of \$2,061,070 for the subject property for tax year 2015.

Petitioner presented the following indicators of value:

Market:	\$1,633,775
Cost:	Not applicable
Income:	\$1,591,489

Petitioner's witness, Mr. Stevens, presented a market approach consisting of four comparable sales ranging in sale price from \$1,550,000 to \$5,000,000 and in size from 26,375 to 65,665 square feet to indicate a unit value of \$58.77 to \$82.22 per square foot prior to adjustment. After adjustments were made, the sales ranged from \$62.88 to \$79.19 per square foot. Mr. Stevens concluded to a value of \$65.00 per square foot as reasonable for the subject, with sale 3 believed to be most similar to the subject. This indicated a value of \$1,633,775 using the market approach.

Petitioner presented an income approach to derive a value of \$1,591,489 for the subject property. Information for five lease transactions was analyzed to conclude to a rental rate of \$6.50 per square foot, net of expenses. This was based on an indicated range of \$5.50 to \$7.00 per square foot derived from comparable rental data. A deduction of 10% was taken for vacancy and credit loss. Afterwards, an additional 8% was deducted for owner's operating, maintenance, and reserve expenses. The vacancy rate was based on CoStar data for second quarter 2014 information for industrial buildings located within a one-mile radius of the subject. A capitalization rate of 8.5% was derived from the Summer 2014 Burbach & Associates, Inc. Real Estate Investment Survey.

Respondent offered two exhibits at the hearing. Respondent's Exhibit A was titled *Actual Value Data Summary*. Respondent's Exhibit A was prepared by the Douglas County Assessor's Office as part of a consulting service. According to Respondent, the document was "not to be considered as an appraisal report" and was identified as "only a summary of the level of value data as applied within the computer assisted mass appraisal (CAMA) system to the subject property characteristics." The Data Summary indicated the following value:

Market:	\$2,061,070
Cost:	Not applied
Income:	Not applied

Respondent's Exhibit B was submitted as rebuttal to Petitioner's Exhibit 1. Exhibit B included new comparable sales and an income approach that was not included in the initial Rule 11 documentation submitted by Respondent.

Petitioner objected to the admission of Respondent's Exhibits A and B and asked the Board to strike both of them. The Board admitted Respondent's Exhibits A and B over Petitioner's objections.

Mr. Stephen Snyder, CAE, SRA, employee of the Douglas County Assessor's Office, presented testimony that was to be "considered as advocacy for the current market value." Respondent presented a market approach consisting of three comparable sales ranging in sale price from \$2,009,000 to \$4,559,520 and in size from 25,022 to 54,280 square feet, representing a value

range of \$80.29 to \$84.00 per square foot. No adjustments were applied and a value of \$82.00 per square foot was used to support the assigned value of \$2,061,070.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject property was incorrect. “A taxpayer’s burden of proof in a BAA proceeding is well-established: a protesting taxpayer must prove that the assessor’s valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding.” *Board of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005).

After consideration of all three approaches to value, Petitioner provided the market and income approaches to value the subject, placing the greatest reliance on the income approach to conclude to a value of \$1,600,000. The income approach included an analysis of five industrial lease transactions supporting a rental rate of \$6.50 per square foot for the subject, net of expenses. This concluded rate was supported by Petitioner’s lease comparables data which indicated a range of \$5.50 to \$7.00 per square foot. The Board found persuasive Petitioner’s determination of vacancy rate which was based on CoStar data and Petitioner’s capitalization rate of 8.5% which was derived from an investor’s survey. Although Petitioner’s market approach contained errors and was found by the Board to be less reliable than Petitioner’s income approach, it was still deemed supportive of the final conclusion of value.

Respondent submitted a document titled “*Actual Value Data Summary*” that was identified as a “summary of the level of value data as applied within the computer assisted mass appraisal system to the subject property characteristics...” (Exh. A, page A-3). The document was reportedly prepared by the Douglas County Assessor’s Office, with no specific person responsible for the analysis contained therein.

After carefully reviewing all of the documentation and testimony, the Board finds Petitioner’s evidence convincing. Petitioner’s analysis was detailed, thorough and provided record support for Petitioner’s requested value. The analysis considered all three approaches to value. Petitioner’s market approach included a representative body of sales and included appropriate adjustments to the selected comparable properties. Petitioner’s analysis also included a credible and convincing income approach. Although Petitioner considered but did not develop a cost approach, the Board finds that Petitioner’s market and income approaches are more reliable indicators of value for the subject property.

The evidence submitted by Petitioner was sufficient to convince the Board that Respondent’s assigned value was incorrect. Petitioner’s evidence was also sufficient to convince the Board of the subject property’s value for tax purposes. See *Sampson*, 105 P.3d at 208 (The BAA members’ expertise enables them to determine from the evidence presented by the taxpayer whether the county’s valuation is incorrect. The taxpayer’s evidence may also be sufficient to further establish the subject property’s value for tax purposes).

The Board finds Respondent’s documentation and testimony less credible. Respondent’s Exhibit A included a summary of the data applied within Respondent’s mass appraisal system. While mass appraisal is an acceptable methodology for valuing property both under the Assessors’

Reference Library and the Uniform Standards of Professional Appraisal Practice (USPAP), the Board did not find the limited summary of the mass appraisal data provided by Respondent convincing. Respondent's counsel admitted that the mass appraisal evidence Respondent submitted was not a USPAP compliant appraisal report. Rather, it was a summary of how the assessor's office valued the subject property and the methodology the assessor's office used. The limited mass appraisal evidence submitted by Respondent does not appear to conform to the standards set forth in USPAP for mass appraisal reports. Moreover, the credibility of the evidence was impacted by the fact that the document was unsigned, and Respondent did not identify a specific person or persons responsible for the analysis presented therein. This limited the ability of both Petitioner and the Board to cross examine Respondent's witness about the contents of the analysis.

Respondent's Exhibit B, which was submitted by Respondent as a rebuttal documentation three business days prior to the hearing, introduced new comparable sales and an income approach that was not included in the initial Rule 11 documentation submitted by Respondent. The new comparable sales and income approach did not directly rebut the evidence submitted by Petitioner 10 business days prior to the hearing. Because the new comparable sales and income approach were submitted by Respondent only three business days before the hearing, Petitioner only had a short time to review the information and did not have an opportunity as provided by Rule 11(b) to submit reply documentation pertaining to the information. Therefore, the Board placed minimal weight on Respondent's Exhibit B.

Based on the credible evidence submitted by Petitioner to value the subject property, the Board concludes that the 2015 actual value of the subject property should be reduced to \$1,600,000.

Although unnecessary to reach our decision for this appeal, the Board will address Petitioner's contention that Respondent was not authorized to present a consultant report prepared by the assessor's office (as opposed to an independent appraisal report) at the hearing and that valuations completed by assessor employees must be prepared in a form of appraisals. This issue was contested by the parties at the hearing, and the Board believes that addressing this issue will be helpful to the parties in future proceedings before the Board.

During the hearing, Respondent's counsel correctly asserted that there is no requirement for a county to provide an appraisal as evidence in a proceeding before the Board. Although Article X, Section 3 of the Colorado Constitution states that valuations for assessment shall be based on appraisals by assessing officers, the Board believes that an assessor's valuation using mass appraisal in issuing notices of valuation meets this constitutional requirement.

Furthermore, the petitioner in a proceeding before the Board bears the burden of proving the county's valuation is incorrect. Because it is the petitioner's burden to show the county's valuation is incorrect, the county is not required to submit an appraisal or any other documentation at a BAA hearing for that matter. If the petitioner meets the burden of proving the county's valuation is incorrect, the taxpayer's evidence may or may not be sufficient to further establish the subject property's value for tax purposes. Where insufficient evidence is presented at a BAA hearing in order to determine a property's correct value, the Board may properly remand the matter for an accurate assessment by the county. See *Sampson* 105 P.3d at 208.

Because the correct value may be at issue in a BAA hearing when the taxpayer meets its burden of proving incorrectness, counties nearly always provide a property specific appraisal for BAA hearings, even though they are not required to do so. When a county elects to provide a property specific appraisal for a BAA hearing, it should be provided as part of the initial Rule 11(b) document exchange and not as reply documentation. This provides the taxpayer with a fair opportunity to review the appraisal and file reply documentation relating to the appraisal.

The Board has researched the specific contention raised by Petitioner that Respondent was not authorized to present a consultant report prepared by the assessor's office (as opposed to an independent appraisal report) at the hearing and that valuations completed by assessor employees must be appraisals. The Board does not believe that this issue has been addressed by Colorado courts.

Colorado statutes clearly allow taxpayer agents who are appraisers to act as advocates in property tax protests and appeals by performing "Consulting Services" without their work being deemed an appraisal regulated by the Colorado Division of Real Estate -- as long as they don't act as a disinterested third party in rendering an unbiased analysis, opinion or conclusion relating to the nature, quality, value, or utility of real estate. However, based on a plain reading of the statutes, the Board does not believe that employees of a county assessor's office may act as an advocate in property tax protests and appeals by performing "Consulting Services" without their work being deemed an appraisal.

Section 12-61-702(1)(a), C.R.S. provides a broad definition of the terms "appraisal", "appraisal report" and "real estate appraisal". These terms include not only an opinion of value of real estate, but also an analysis, which is a general study of real estate not specifically performed only to determine value. The terms specifically also include a valuation completed by an appraiser employee of a county assessor.

The Board believes that employees of county assessors are employed to act as disinterested third parties in rendering unbiased analysis, opinion and conclusions relating to the nature, quality, value and utility of real estate. The Board reviewed the statutory duties for assessors in the Assessors' Reference Library and did not find statutory authorization for assessors or their employees to act as non-disinterested third party consultants in the performance of their duties. To the contrary, as public employees, assessment officials have a fiduciary duty to carry out their duties for the benefit of the people of the state -- not for their personal benefit. Unlike taxpayer agents who may receive a contingent fee for their work in BAA hearings (and whose credibility may be called into question at a BAA hearing by the fact that they are receiving a contingent fee), the public trust demands that employees of county assessors perform their duties in an unbiased manner as disinterested third parties. As such, the reports prepared by employees of county assessors for BAA hearings will likely be deemed to be "independent appraisals" and not "consulting services" under statute -- even when labeled as "consulting services" by the assessor's office. The credibility of the reports may be called into question by the opposing party when the reports are not prepared in accordance with uniform standards of professional appraisal practice. Ultimately, the Board will weigh all evidence, taking into account issues effecting the credibility of the evidence.

**ORDER:**

Respondent is ordered to reduce the 2015 actual value of the subject property to \$1,600,000.

The Douglas County Assessor is directed to change his/her records accordingly.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

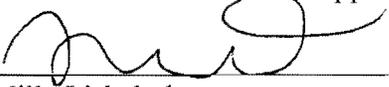
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

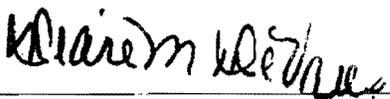
**DATED and MAILED** this 9th day of June, 2016.



I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

  
Milla Lishchuk

**BOARD OF ASSESSMENT APPEALS**

  
Diane M. DeVries

  
Sondra W. Mercier